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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
NEW ACCESS COMMUNICATIONS LLC,)
) No. 02-0658
Application for a certificate of)
local service authority to)
operate as a facilities and)
non-facilities-based carrier of)
telecommunications services in)
the Ameritech service areas in)
the State of Illinois)

Chicago, Illinois
December 10, 2002

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

MR. JOHN RILEY,
Administrative Law Judge

1 APPEARANCES:

2

3 MR. PATRICK CROCKER

4 151 South Rose Street

5 Suite 900

6 Kalamazoo, Michigan 49007

7 appearing telephonically

8 for the applicant;

9

10

11 MR. ROBERT KOCH

12 527 East Capitol Avenue

13 Springfield, Illinois 62701

14 appearing telephonically

15 for staff of the

16 Illinois Commerce Commission.

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18

19

20 SULLIVAN REPORTING COMPANY, by

21 Leah Ann Bezin, CSR

22 License No. 084-001104

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>				
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Exmnr</u>	Re-	Re-	By	
3	Steven Clay	12		17		21				
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11		<u>E</u>	<u>X</u>	<u>H</u>	<u>I</u>	<u>B</u>	<u>I</u>	<u>T</u>	<u>S</u>	
12	<u>Number</u>	<u>For</u>	<u>Identification</u>	<u>In</u>	<u>Evidence</u>					
13	APPLICANT'S									
14	Exhibit No. 1	29		29		29				
15	Exhibit No. 2	29		30		30				
16	Exhibit No. 3	30		31		31				
17	Exhibit No. 4	31		31		31				
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1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call Docket
3 02-0658.

4 This is an application by New Access
5 Communications, LLC, for a certificate of local
6 service authority to operate as a facilities and
7 non-facilities-based carrier of
8 telecommunications services in the Ameritech
9 service areas in the State of Illinois.

10 And, Mr. Crocker, you are here
11 representing New Access?

12 MR. CROCKER: That's correct, your Honor.

13 JUDGE RILEY: Would you enter an appearance
14 for the record, please.

15 MR. CROCKER: Patrick Crocker, 151 South Rose
16 Street, Suite 900, Kalamazoo, Michigan
17 K-a-l-a-m-a-z-o-o, Michigan 49007, appearing on
18 behalf of the applicant today.

19 And we also have a witness by the name
20 of Steven Clay --

21 JUDGE RILEY: Okay. Well, we'll get to
22 that --

1 MR. CROCKER: -- president.

2 JUDGE RILEY: Right. I'm sorry. We'll get to
3 that in just a second.

4 MR. CROCKER: Okay.

5 JUDGE RILEY: Mr. Koch, would you enter an
6 appearance on behalf of staff.

7 MR. KOCH: Yes.

8 Appearing on behalf of the staff of the
9 Illinois Commerce Commission, Robert Koch,
10 K-o-c-h, 527 East Capitol Avenue, Springfield,
11 Illinois 62701.

12 JUDGE RILEY: Thank you.

13 And, Mr. Crocker, just off the record a
14 moment ago you indicated to me that the applicant
15 already has been provided with a certificate
16 under Section 13.404 of the Illinois Public
17 Utilities Act to provide resold local and long
18 distance service.

19 Is that correct?

20 MR. CROCKER: That's correct, your Honor.

21 JUDGE RILEY: And insofar as I note that the
22 current application also states that the

1 applicant is applying for a 13.404 certificate,
2 why don't we -- why don't I take your motion to
3 amend the application to reflect that it is
4 applying only for a Certificate of Authority
5 under 13.403 and Section 13-405 of the Act?

6 MR. CROCKER: Thank you, your Honor.

7 JUDGE RILEY: All right.

8 And, Mr. Koch, do you have any objection
9 to that motion?

10 MR. KOCH: No, I do not.

11 JUDGE RILEY: All right, then.

12 The motion is granted, and the
13 application is amended to reflect that applicant
14 is not seeking authority in this application
15 under Section 13.404 of the Act. Applicant is
16 seeking only authority under Section 13.403 and
17 Section 13.405.

18 And is there anything else, Mr. Crocker,
19 that, preliminarily, we have to deal with?

20 MR. CROCKER: I don't think so, your Honor.

21 I'd just like to ask a few questions of
22 Mr. Clay and then pass him over for the staff to

1 cross.

2 JUDGE RILEY: Okay.

3 We are calling Mr. Steven Clay as a

4 witness.

5 (Witness sworn.)

6 JUDGE RILEY: Please proceed, Mr. Crocker.

7 MR. CROCKER: Thank you, your Honor.

8 STEVEN CLAY,

9 called as a witness herein, having been first

10 duly sworn, was examined and testified as

11 follows:

12 DIRECT EXAMINATION

13 BY

14 MR. CROCKER:

15 Q. Mr. Clay, could you please state your name

16 and business address for the record.

17 A. Sure.

18 My name is Steven, S-t-e-v-e-n, Clay,

19 C-l-a-y. And the business address is

20 801 Nicolet, N-i-c-o-l-e-t, Mall, Suite 350,

21 Minneapolis, Minnesota 55402.

22 Q. Great. And what is your occupation?

1 A. I am the carrier services president of New
2 Access Communications, LLC.

3 Q. Okay. And is the purpose of your
4 testimony today to describe the nature of the
5 company's business and to demonstrate the
6 company's financial, managerial and technical
7 ability to provide the telecommunication services
8 contemplated by this filing?

9 A. Yes, it is.

10 Q. Okay. Could you please briefly describe
11 the nature of the telecommunications services
12 that the company intends to offer customers in
13 Illinois?

14 A. Sure.

15 The company intends to offer local
16 exchange services and long distance interexchange
17 services on a non-facilities basis through UNE-P
18 services for local service and by reselling the
19 services of underlying carriers for long distance
20 services.

21 Q. Okay. And in what state is the company
22 organized?

1 A. Minnesota.

2 Q. All right. And is the company authorized
3 to provide -- or to transact business as a
4 foreign corporation within Illinois?

5 A. Yes, it is.

6 Q. And has the company received authorization
7 to provide the resale of local and long distance
8 services from the Illinois Commerce Commission?

9 A. Yes, it has.

10 Q. Could you please briefly describe your
11 background in business and telecommunications.

12 A. Sure.

13 I served as a lawyer primarily
14 representing telecom companies for approximately
15 six years and, in the summer of 2000, helped to
16 found New Access Communications and have served
17 as an officer and director of New Access
18 Communications since that time.

19 Q. Okay. Could you identify some of the
20 management team and some of their
21 responsibilities?

22 A. Sure.

1 Our CEO, chief executive officer, is
2 Greg Wilmes, W-i-l-m-e-s.

3 Our vice president of marketing is
4 David Buss, B-u-s-s.

5 And our CFO is Mr. Wayne Barthel,
6 B-a-r-t-h-e-l.

7 Q. Okay. Has the company's financial
8 circumstances virtually changed since we have
9 filed the application?

10 A. They have not.

11 Q. Will the company's name appear on the
12 telephone bill?

13 A. Yes, it is will.

14 We send each customer a direct bill. We
15 do not bill through any other bill services.

16 Q. All right. And will you bill the
17 customers monthly?

18 A. Yes, we will.

19 Q. Will a toll-free number appear on the
20 customer's bill?

21 A. Yes, it will.

22 Q. To contact the company?

1 A. That's correct.

2 Q. How many people does the company currently

3 employ?

4 A. Approximately 45.

5 Q. Will the company abide by federal and

6 state slamming and cramming laws?

7 A. Yes, we will.

8 Q. Does the company have written guidelines

9 to prevent the unauthorized slamming of local

10 exchange customers?

11 A. Yes, we do.

12 MR. CROCKER: I have no further questions,

13 your Honor.

14 I'd like to turn my witness over for

15 cross.

16 JUDGE RILEY: All right.

17 And, Mr. Koch, are you prepared to go

18 forward with your cross-examination?

19 MR. KOCH: Yes, I am your Honor.

20 JUDGE RILEY: Please proceed.

21 MR.

22 KOCH: Thank you.

1 CROSS EXAMINATION

2 BY

3 MR. KOCH:

4 Q. Mr. Clay, I am looking at Question 9 of
5 your application.

6 A. Okay. In the direct file testimony?

7 Q. No, actually, a question out of the
8 application form.

9 A. Oh, okay. Let me get that up.

10 Okay.

11 Q. And it's indicated that you are authorized
12 to provide telecommunications service throughout
13 the United States.

14 A. Um-hmm.

15 Q. What jurisdictions or what states are you
16 providing service?

17 A. Let me get that for you. I'll have that
18 for you in less than ten seconds.

19 We currently are providing services in
20 Minnesota; North Dakota; Montana; Washington;
21 Oregon; Colorado; Wisconsin; Indiana; Ohio; and
22 Texas.

1 Q. And are you providing strictly resale or
2 are you providing UNE-P in any of these states?

3 A. It's a mix.

4 Q. Okay.

5 A. Many of those states we are providing
6 both; in all states we are providing resale.

7 Q. Okay. Thank you.

8 Does your company provide prepaid
9 telephone service?

10 A. We do not.

11 Q. Okay.

12 A. I believe I left Iowa off of my list. We
13 are also in Iowa.

14 Q. It's off my list too.

15 A. Okay.

16 Q. Now, for 911 services, does your billing
17 system and your accounting system have the
18 ability to distinguish between facilities-based
19 and resale services?

20 A. As far as, say, a particular customer is
21 on a facilities-based or a resale service?

22 Q. Mainly for the purpose of collecting and

1 remitting the 911 surcharge --

2 A. Um-hmm.

3 Q. -- I'm seeking to find out if your
4 accounting systems have the ability to
5 distinguish between the two types of
6 provisioning, resale and --

7 A. We do make that distinction in our
8 systems.

9 In other words, we can distinguish
10 whether a customer -- we will not be providing
11 any facilities-based services in that we will own
12 our own facilities, but we will be distinguishing
13 in our customer database between customers that
14 are on a resale basis and customer on UNE-P.

15 We anticipate that in Illinois all of
16 the customers that we serve will be on a UNE-P
17 basis.

18 Q. Okay. Do you have customers in Illinois
19 right now?

20 A. We do not.

21 Q. Okay. And so your accounting systems will
22 have the ability to -- let me try to word this a

1 little bit differently.

2 You will be collecting a 911 surcharge

3 from your customers and submitting it to the

4 911 --

5 A. Yes, we will.

6 Q. -- providers?

7 Okay. Thank you.

8 And hold on just a moment.

9 And who will be responsible for

10 maintaining your 911 database?

11 A. That will be maintained by Ameritech.

12 Q. For your company, someone will need to

13 coordinate with Ameritech, or whomever, and

14 provide them with names and customer information.

15 A. Um-hmm.

16 Q. Who at your company will be responsible

17 for doing that?

18 A. That will likely be Kristy Hicks, our

19 director of provisioning.

20 Q. And her contact information, is it the

21 same as yours?

22 A. Yes, it is.

1 Q. And will your company be providing 911
2 information or updates to the 911 database on a
3 daily basis or as needed?
4 A. Yes.
5 MR. KOCH: Okay.
6 I have no further questions.
7 JUDGE RILEY: Thank you, Mr. Koch.
8 Mr. Clay, I have just got a few
9 questions of my own.
10 THE WITNESS: Sure.
11 JUDGE RILEY: Just bear with me.
12 EXAMINATION
13 BY
14 JUDGE RILEY:
15 Q. On Question No. 26 of the application,
16 under Technical, it says, Does applicant utilize
17 its own equipment and/or facilities?
18 The answer is yes.
19 And then it says -- it also says
20 applicant intends to utilize unbundled network
21 elements to provide service to
22 customers -- strike that. Strike that.

1 Question No. 26, under Technical, it
2 says, Does applicant utilize its own equipment
3 and/or facilities?

4 The answer is marked yes.

5 And I guess my question is, will the
6 applicant also be using the facilities of
7 Ameritech and Sprint?

8 A. As far as switching fiber, any sort of
9 telecom facilities used for the transport of
10 messages will exclusively use the facilities of
11 Ameritech or Sprint.

12 Q. Okay. I think what my confusion was is
13 that the box is marked yes.

14 A. Right.

15 Q. But down below, in the same question, it
16 says if no, which facility providers.

17 MR. CROCKER: Yes. Your Honor, I apologize.
18 That was my error, which was carried over from
19 the previous application.

20 JUDGE RILEY: Okay. Is it my understanding --

21 MR. CROCKER: It's supposed to be no.

22 JUDGE RILEY: Okay. Then Question 26 should

1 be marked no.

2 MR. CROCKER: Yeah. And to the extent that --

3 JUDGE RILEY: All right. That's not a

4 problem. But let's just amend the application to

5 reflect that the answer to No. 26 is no.

6 MR. CROCKER: Thank you, your Honor.

7 JUDGE RILEY: Okay.

8 Q. And with regard to No. 27, I believe we've

9 already dealt with this.

10 A. That's right.

11 Q. All right. Then I'll strike the reference

12 to No. 27.

13 And Question 29 is answered yes with

14 regard to payphone service.

15 Will the applicant be providing payphone

16 service?

17 A. We will not.

18 Q. Okay. Then is it my understanding that

19 the answer to 29 should be no?

20 A. That's correct.

21 Q. Okay. We will amend the application

22 again. 29 is no.

1 And, let's see, now, with regard to the
2 filings that occurred on our e-docket with regard
3 to the resumes, are there any changes to those?

4 A. Is it the resumes of management personnel?

5 Q. Right.

6 A. No, there are not.

7 Q. All right.

8 And with regard to the financial
9 information that was provided, are there any
10 changes to that?

11 A. No changes.

12 We probably have more updated financials
13 available at this point.

14 Q. Oh, for what year were the financials
15 provided?

16 A. Looking through the application, it looks
17 like those were 2000 financials.

18 Q. 2000. Okay.

19 And as you testify today, can you
20 represent that the financial condition of the
21 company is in the same state or better than
22 reflected on the financials that have been

1 submitted?

2 A. It is. It is significantly better.

3 Q. All right.

4 Now, is the name that is to appear on
5 the certificate the same name that appears on the
6 application?

7 A. That's correct.

8 Q. And there are no doing business as names?

9 A. That's correct.

10 Q. And this is a Minnesota limited liability
11 company?

12 A. Correct.

13 Q. And it's located in Minnesota?

14 A. Correct.

15 Q. And who will do the technical support for
16 the applicant? Will that be an underlying
17 carrier or will you have your own technical
18 support?

19 A. We have a certain amount of technical
20 people here, and we are capable of performing
21 some functions. But as far as any maintenance on
22 Ameritech equipment or anything like that, that

1 will be provided by Ameritech.

2 Q. All right.

3 And will applicant be offering operator
4 assisted services, or will those be left to the
5 underlying carrier?

6 A. That will be left to the underlying
7 carrier.

8 Q. The only other question that I had -- you
9 had testified earlier that the applicant does
10 have a Certificate of Authority to transact
11 business in Illinois?

12 A. Correct.

13 Q. The only thing is that the copy that was
14 provided on our e-docket did not have any kind of
15 a stamp or a fee from the Illinois Secretary of
16 State.

17 MR. CROCKER: That's right. I noticed that as
18 well, your Honor.

19 JUDGE RILEY: Mr. Crocker, was that you?

20 MR. CROCKER: Yes, that's correct.

21 I'm trying to figure out why that is.

22 JUDGE RILEY: Q Mr. Clay, as you testified

1 here today, can you represent that the -- that a
2 valid Certificate of Authority to transact
3 business in Illinois has been issued to the
4 applicant.

5 A. Yes, I can.

6 Q. All right. And it's your understanding
7 that the application was properly filed and all
8 fees were paid?

9 A. That's correct.

10 JUDGE RILEY: All right.

11 And, Mr. Koch, do you have a
12 recommendation with regard to this application?

13 MR. KOCH: Yes, your Honor.

14 I see no reason why this application
15 could not be granted.

16 JUDGE RILEY: All right. Thank you very much.

17 Now let's just deal with some exhibits.

18 Q. The first thing I'd like to do is mark
19 your prefiled testimony.

20 I should ask you, with regard to the
21 testimony that was prefiled by you in this
22 matter, was that prepared by you or at your

1 direction?

2 A. Yes, it was.

3 Q. And do you have a copy of that testimony
4 before you?

5 A. Yes, I do.

6 Q. And as you look at it today, are there any
7 changes that you would make to that testimony?

8 A. No, there are not.

9 JUDGE RILEY: Okay.

10 I'll mark that as Applicant's Exhibit 1.
11 (Whereupon, Applicant's Exhibit
12 No. 1 was marked for
13 identification.)

14 JUDGE RILEY: And, Mr. Crocker, I take it you
15 are moving for the admission of it into evidence?

16 MR. CROCKER: That's correct, your Honor.

17 JUDGE RILEY: Any objection, Mr. Koch?

18 MR. KOCH: No, your Honor.

19 JUDGE RILEY: Okay.

20 (Whereupon, Applicant's No. 1 was
21 admitted into evidence.)

22 JUDGE RILEY: Exhibit 2, I'd like to mark the

1 financial data that was submitted.

2 (Whereupon, Applicant's Exhibit No. 2
3 was marked for
4 identification.)

5 JUDGE RILEY: Q Again, are there any -- I
6 asked this before. You indicated there were no
7 changes; is that correct.

8 A. Correct.

9 Q. All right.

10 A. None to the worse, anyway.

11 JUDGE RILEY: And, again, applicant is moving
12 for the admission of the financial information
13 into evidence?

14 MR. CROCKER: That's correct, your Honor.

15 JUDGE RILEY: Any objection, Mr. Koch?

16 MR. KOCH: No, your Honor.

17 JUDGE RILEY: All right.

18 (Whereupon, Applicant's No. 2 was
19 admitted into evidence.)

20 JUDGE RILEY: And let's mark the Certificate
21 of Authority to transact business in Illinois as
22 it was filed on the e-docket as Exhibit No. 3.

1 (Whereupon, Applicant's Exhibit No. 3
2 was marked for
3 identification.)

4 JUDGE RILEY: And, again, moving for the
5 admission of that into evidence.

6 Mr. Koch, do you have any objection?

7 MR. KOCH: No, your Honor.

8 (Whereupon, Applicant's No. 3 was
9 admitted into evidence.)

10 JUDGE RILEY: And, lastly, I would like to
11 mark as Applicant's Exhibit 4 the resumes of the
12 principals of the firm.

13 (Whereupon, Applicant's Exhibit No. 4
14 was marked for
15 identification.)

16 JUDGE RILEY: And moving for the admission of
17 that into evidence.

18 Mr. Koch, would you have any objection?

19 MR. KOCH: No, your Honor.

20 JUDGE RILEY: All right.

21 (Whereupon, Applicant's No. 4 was
22 admitted into evidence.)

1 And, Mr. Crocker, did you have anything
2 further pursuant to the application?

3 MR. CROCKER: No, your Honor.

4 JUDGE RILEY: All right, then.

5 Mr. Koch, did you have anything further?

6 (Witness excused.)

7 MR. KOCH: No, your Honor.

8 JUDGE RILEY: Then I will direct the court
9 reporter to mark this matter heard and taken.

10 And I will have an order for the
11 Commission at the earliest possible time.

12 MR. CROCKER: Thank you very much.

13 JUDGE RILEY: Gentleman, thank you very much.

14 MR. KOCH: Thank you.

15 JUDGE RILEY: Good morning.

16

17 HEARD AND TAKEN

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